



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 11, 2010

Ms. Charlotte Towe  
Assistant General Counsel  
TDCJ—Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2010-02090

Dear Ms. Towe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the “Act”), chapter 552 of the Government Code. Your request was assigned ID# 370039.

The Texas Department of Criminal Justice (the “department”) received a request for documentation related to job posting number 030279. You state some information has been or will be made available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.122 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122(b) of the Government Code excepts from required public disclosure “a test item developed by a ... governmental body[.]” Gov’t Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee’s overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

Having reviewed the submitted information, we find that questions 3, 4, 7, 9, and 10 evaluate the applicant's specific knowledge or ability in a particular area, thus qualifying as "test items" under section 552.122(b) of the Government Code. We also find that release of the model and actual answers to these test items would tend to reveal the questions themselves. Therefore, the department may withhold this information pursuant to section 552.122(b). However, we find that questions 1, 2, 5, 6, and 8 are general questions evaluating an applicant's individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, questions 1, 2, 5, 6, and 8 and the model and actual answers to these questions are not excepted from disclosure under section 552.122 of the Government Code, and must be released to the requestor.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not specifically excluded by section 552.137(c). Therefore, unless the individual at issue consents to release of her e-mail address, the department must withhold the e-mail address we have marked under section 552.137.

In summary, the department may withhold questions 3, 4, 7, 9, and 10, as well as the model and actual answers to these questions, under section 552.122 of the Government Code. The department must withhold the e-mail address we have marked under section 552.137. The remaining information must be released.<sup>1</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

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<sup>1</sup>We note the submitted application contains a Texas driver's license number. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold Texas driver's license numbers under 552.130 of the Government Code without the necessity of requesting an attorney general decision with regard to the applicability of this exception. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)). We also note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 370039

Enc. Submitted documents

c: Requestor  
(w/o enclosures)